

1 down to that original rate, if the NFL
2 surcharge is rejected. Is that what that
3 indicates to you, sir?

4 A Well, this seems to be talking a
5 very precise deal, apparently, with EchoStar.
6 That seems to be what it's talking about, so
7 I don't think that's making an industry
8 statement.

9 JUDGE SIPPPEL: Oh, it says up on
10 top, "Should we proceed with proposed Echo
11 deal"?

12 BY MR. PHILLIPS:

13 Q Now, Echo has an MFN in its deal?

14 A I don't know.

15 Q If it does -- if Echo -- if you
16 have MFNs, it's pretty standard for you to
17 have MFNs in your deals with networks.

18 Correct?

19 A It is.

20 Q And that's pretty standard
21 throughout the industry. Correct?

22 A I believe so.

1 Q And, do you have any reason to
2 doubt that EchoStar has an MFN?

3 A No.

4 Q So, that if EchoStar got a
5 particular deal, then you would expect that
6 deal to apply pretty much across the industry,
7 at least with anybody who had MFNs. Correct?

8 A No, not necessarily.

9 Q Well, it would certainly -- the
10 Echo deals would be required by Most Favored
11 Nations clause to be extended to anybody with
12 a similar deal. Correct?

13 A No.

14 Q That's not how MFN clauses work?

15 A No.

16 Q Okay. That's not how a Comcast
17 MFN clause works?

18 A MFN clauses can work many
19 different ways, some are size-based, some
20 apply only to a particular category of
21 distributor. There are many flavors of MFN
22 clauses, so I don't know what the EchoStar MFN

1 clause would have said, if there was one. It
2 could have been restricted to a certain
3 category of distributors, so it might not have
4 applied to all distributors.

5 Q So, it might just apply to a
6 certain category, and not across the market.
7 Is that what you're saying?

8 A Well, I don't know what it says.
9 There could be many other limitations.

10 Q Now, if you turn to page 32 of
11 this document.

12 A Yes, sir.

13 JUDGE SIPPEL: I'm sorry. You can
14 keep going.

15 MR. PHILLIPS: Oh, I'm sorry, Your
16 Honor. I just want to make sure you catch up.

17 JUDGE SIPPEL: I'll catch up. I'm
18 with you.

19 MR. PHILLIPS: Okay. We're on
20 page 32.

21 JUDGE SIPPEL: 32?

22 MR. PHILLIPS: Yes, sir.

1 JUDGE SIPPEL: I'm sorry. Go
2 ahead.

3 MR. PHILLIPS: That's all right,
4 Your Honor.

5 BY MR. PHILLIPS:

6 Q "Key issues, OLN strategy." Now,
7 have you seen this page before, Mr. Bond?

8 A No, other than in preparation for
9 testimony.

10 Q And this looks like it has
11 proposed OLN rates in terms without the NFL.
12 At least, that's what it's entitled. Correct?

13 A That's what it's entitled, yes.

14 Q And then, there are those numbers
15 down there without the NFL. Correct?

16 A Yes.

17 Q And, roughly speaking, the
18 midpoint of those numbers is in the same range
19 that we saw in Paragraph 6 of your written
20 statement. Correct?

21 A Yes.

22 MR. PHILLIPS: All right. You can

1 put that aside, Mr. Bond.

2 BY MR. PHILLIPS:

3 Q Now, you mentioned that you
4 thought that Versus might go out there and ask
5 for a price increase if it acquired this \$2
6 billion plus package of games. Correct?

7 A Yes.

8 Q Now, do you think that Versus
9 could have economically sustained that cost
10 that it would have incurred if it had had its
11 distribution narrowed to Comcast Premium
12 Sports Tier?

13 A Well, it would depend on the
14 affiliate fees.

15 Q Affiliate fees would have to be
16 pretty amazingly high to sustain that,
17 wouldn't they?

18 A Yes.

19 Q It would have to have greater
20 distribution than a sports tier in order to
21 remain profitable. Is that fair to say?

22 A Yes.

1 Q Now, you know, Mr. Bond, you and I
2 have spent so much time together. I know I've
3 asked you these questions before, but I
4 haven't asked them in front of the Judge. Let
5 me just through them again.

6 In 2003 and 2004, you negotiated
7 the contract with the NFL Network. Correct?

8 A Yes.

9 Q And, at that time, Comcast really
10 didn't have any interest in the NFL Network,
11 did it?

12 A That's a little overstated.

13 Q I'm sorry, sir. Minimal interest?
14 Is that a better way?

15 A Yes.

16 Q Okay. And, you agreed, though, to
17 carry the NFL Network because NFL promised you
18 a seat at the table for negotiations for live
19 games. Is that a fair statement?

20 A Or Sunday Ticket.

21 Q Well, live games, whether on
22 Sunday Ticket or a package. Correct?

1 A Well, Sunday Ticket is a little
2 bit different. But Sunday Ticket, or live
3 games.

4 Q Well, Sunday Ticket carries live
5 games, doesn't it?

6 A They do.

7 Q And the agreements that you
8 negotiated gave you -- gave Comcast a right to
9 a seat at the table for a negotiation for
10 Sunday Ticket, or live games. Correct?

11 A There was an agreement where the
12 NFL was going to negotiate in good faith with
13 us.

14 Q And that's the agreement that you
15 negotiated. Correct?

16 A Yes.

17 Q And that you executed. It's your
18 signature on it. Correct?

19 A Correct.

20 JUDGE SIPPEL: Well, I've got the
21 impression -- you know, you're making it sound
22 like there's not much difference between the

1 two. I got the impression that Sunday Ticket
2 is a bigger bang for the buck than just the
3 eight games. Am I right?

4 MR. PHILLIPS: Well, let me ask
5 this, Your Honor.

6 BY MR. PHILLIPS:

7 Q Do you know what's been reported
8 publicly about the amount the Sunday Ticket
9 gets on DirectTV?

10 A The amount of money the NFL gets
11 on Sunday Ticket?

12 Q Yes.

13 A Yes.

14 Q And how much is that?

15 A A billion dollars.

16 Q Okay. And how much was -

17 A Per year.

18 Q -- Comcast willing to pay in 2006
19 for the eight games? About \$2 billion.
20 Correct?

21 MR. CARROLL: Objection.

22 THE WITNESS: That was to -

1 MR. CARROLL: A billion dollars a
2 year?

3 THE WITNESS: Yes.

4 MR. CARROLL: Versus \$2 billion
5 total. That's a blank misrepresentation by
6 the NFL counsel, and he knows it.

7 MR. PHILLIPS: No, sir.

8 JUDGE SIPPEL: Well, wait.

9 MR. CARROLL: I'll withdraw the
10 misrepresentation.

11 MR. PHILLIPS: No, wait.

12 MR. CARROLL: It's a billion -

13 JUDGE SIPPEL: Whoa, whoa, whoa,
14 both of you. Both are going -- I'm going to
15 recess the hearing.

16 MR. PHILLIPS: That's fine, Your
17 Honor.

18 JUDGE SIPPEL: Slow down. Slow
19 down. He's -- now, let's get -

20 MR. PHILLIPS: He shouldn't
21 testify, Your Honor.

22 JUDGE SIPPEL: He's not

1 testifying. He's objecting. Okay? He's
2 objecting.

3 MR. PHILLIPS: Okay.

4 JUDGE SIPPEL: Now, you said that
5 I'm not getting -- what are we, back to apples
6 and oranges again? We don't need an economist
7 to figure this out. Okay? We've got a
8 billion dollars, was it a billion dollars a
9 year for the Sunday Ticket?

10 MR. PHILLIPS: That's what Mr.
11 Bond is saying.

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: And it's two point
14 something billion for the package. That's
15 over five-years, if I'm -- in fact, I even did
16 the math with Mr. Singer, the doctor.

17 MR. PHILLIPS: Okay. That's fair,
18 Your Honor.

19 MR. CARROLL: Thank you.

20 JUDGE SIPPEL: So, okay, we're all
21 set?

22 MR. PHILLIPS: We're all set.

1 JUDGE SIPPEL: All right. Now, my
2 question was, which is the better deal? I
3 mean, could you -- let me not say it that way.
4 Could you have lived with the Sunday Ticket
5 deal, and forgotten about the eight-game
6 package?

7 THE WITNESS: We've always been
8 interested in carrying the Sunday Ticket.

9 JUDGE SIPPEL: As opposed -- you
10 mean, rather than, or in addition to?

11 THE WITNESS: It could be
12 either/or, or both. They're really separate,
13 completely separate products. They're not
14 similar.

15 JUDGE SIPPEL: They're football.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: They're live
18 football.

19 THE WITNESS: Right. One is sold
20 on an a la carte basis, so it's sold to people
21 who pay a couple of hundred dollars a year.

22 JUDGE SIPPEL: Wait a minute.

1 Don't say one. You mean the eight-game, or
2 the other one? Which one were you talking
3 about?

4 THE WITNESS: The Sunday Ticket.

5 JUDGE SIPPEL: Sunday Ticket is an
6 a la carte.

7 THE WITNESS: Correct.

8 JUDGE SIPPEL: All right. My
9 question is, if you had a choice, if NFL said
10 to you look, you can get one or the other, but
11 you can't have both, which would you take?

12 THE WITNESS: Well, it would
13 depend on the terms, of course, so it's a
14 difficult question.

15 JUDGE SIPPEL: I understand, it
16 depends on the terms.

17 THE WITNESS: But I think we would
18 -- given what has happened with respect to the
19 NFL Network, and the acceptance in the
20 marketplace of the NFL, we'd rather have the
21 Sunday Ticket.

22 JUDGE SIPPEL: I'm not sure if

1 that helps anything, but I -

2 MR. PHILLIPS: You know, Your
3 Honor, that wasn't really where I was going.

4 JUDGE SIPPEL: I know you weren't.

5 MR. PHILLIPS: But I'm happy to
6 have it.

7 JUDGE SIPPEL: Pardon me?

8 MR. PHILLIPS: That wasn't where I
9 was going, but it's fine to have out there.
10 But let me -- if I can go back to this, I'll
11 move along.

12 JUDGE SIPPEL: Did I make another
13 mistake?

14 MR. PHILLIPS: Oh, no, no, Your
15 Honor. Your Honor, if it helps you make -

16 JUDGE SIPPEL: Every time you
17 agree with me, I worry.

18 (Laughter.)

19 MR. PHILLIPS: You know, I have
20 the same problem with Mr. Carroll, Your Honor.

21 JUDGE SIPPEL: Go ahead, Mr.
22 Phillips. You're doing fine.

1 MR. PHILLIPS: All right. Thank
2 you.

3 BY MR. PHILLIPS:

4 Q Mr. Bond, you work for the cable
5 side. Correct?

6 A I do.

7 Q And I think, as you said, that
8 you're responsible for securing the agreements
9 on the cable distributor side. Correct?

10 A Yes.

11 Q But, in this instance, you -- no,
12 strike that.

13 But, in this instance, you
14 negotiated a seat at the table for Versus.
15 Correct?

16 A Yes. What had happened, the deal
17 had been negotiated by Steve and others to
18 have this right of good faith negotiation.
19 And, so, we were doing the affiliation
20 agreement at the time, so we also papered that
21 letter relating to the good faith negotiation.

22 Q So, you don't consider yourself to

1 really have been that involved in negotiating
2 the deal for the seat at the table to acquire
3 games for Versus?

4 A No. We worked on the document.

5 Q But other than working on the
6 document, you weren't one of the parties
7 involved in the deal?

8 A No.

9 Q Sometimes Comcast has moved
10 networks from expanded basic to digital, which
11 is broader than narrower to exploit new
12 digital technologies. Correct? I think you
13 told me that in your deposition.

14 A Yes.

15 Q Now, other than that move, which
16 is moving to exploit a new technology, analog
17 to digital, can you tell me a time in the last
18 five years that Comcast has moved a non-
19 affiliated network to a less penetrated tier?

20 A We -

21 MR. PHILLIPS: In other words, a
22 network that Comcast own, Your Honor.

1 JUDGE SIPPEL: I hear you. I
2 heard you.

3 THE WITNESS: Yes. If I had --
4 yes, the answer is yes.

5 BY MR. PHILLIPS:

6 Q Well, now, I asked you that
7 question at your deposition. Do you remember
8 that?

9 A Yes.

10 Q And you told me you couldn't
11 recall then.

12 A Was that affiliated, or non-
13 affiliated?

14 Q I asked the question, and this is
15 at your deposition transcript I took of you in
16 my offices on March 27, 2009, at lines 173 --
17 page 173, line 21. I said, "Have you moved,
18 other than the time you moved to exploit new
19 digital technologies, have you moved any
20 network in the last five years from a more
21 penetrated to a less penetrated level in which
22 Comcast owns an equity interest." And you

1 said, "Not that I recall."

2 A Oh, you said in which -- I'm
3 sorry. So that is an affiliated network.

4 Q Okay. I'm sorry. My mistake.
5 Have you moved one in which Comcast owns an
6 affiliated interest to a lesser penetrated
7 tier?

8 A No.

9 Q You're right. I'm sorry. I got
10 that question wrong.

11 A That's all right.

12 Q But we'll get it right. Now, just
13 to get the point. So that you can't think of
14 time that you've taken a channel in which
15 Comcast owns some of the equity and moved it
16 from broader to lower.

17 A No, we've moved it from analog --
18 we've moved Comcast networks from analog to
19 digital.

20 Q But that was to exploit new
21 technology. Correct?

22 A Well, it's changing the tier of

1 service, or changing the distribution service,
2 moving them from analog to digital.

3 Q Can you tell me a time when
4 Comcast in the last five years has moved a
5 network within digital from a more broadly to
6 a less penetrated tier?

7 A I can't think of one.

8 Q Not one.

9 A No.

10 Q Now, neither Versus or Golf has
11 ever been placed on a sports tier by Comcast,
12 has it?

13 A No.

14 Q In fact, you never even thought
15 about it, have you?

16 A No.

17 Q And one of the reasons you told me
18 in the deposition, and please correct me if I
19 mischaracterize you, is that well, Versus and
20 Golf have been around a long time, since the
21 '90s. Correct?

22 A That was one reason, yes.

1 Q And in paragraph 25 of your
2 written statement, you say that, "It's
3 exceedingly rate", and I'll put that in
4 quotes, "exceedingly rare for a national
5 network to be launched on a widespread basis
6 with principally analog distribution
7 nowadays." Correct?

8 A Yes.

9 Q But it's not exceedingly rare to
10 be launched on your broadest digital level for
11 a new network now, is it?

12 A No.

13 Q In fact, Major League Baseball
14 television was just launched on your broadest
15 digital level, wasn't it?

16 A It was.

17 Q And it's never been carried on a
18 premium sports tier by you, has it?

19 A No.

20 Q And Comcast owns an equity
21 interest in Major League Baseball Network,
22 doesn't it?

1 it's a subscription business. And there are
2 many other factors involved in that business
3 than simply ratings. You want a diversity of
4 voices. You may have services that have been
5 carried for a long time, and customers have
6 connected into, so there may be legacy factors
7 involved. So, if you ran an analysis, ratings
8 would probably not be highly correlated with
9 license.

10 Q Would ratings be involved in the
11 first two elements that you discuss there,
12 consumer interest in the network, and
13 intensity of consumer interest?

14 A Perhaps -- intensity is, perhaps,
15 not exactly the right word. Ratings would
16 measure the amount of times viewers view
17 programming, but their interest in it may not
18 be particularly intense. You might have a
19 movie network, movies tend to do very well, as
20 an example, for ratings, but it's usually not
21 very differentiated programming, so it may not
22 have intense viewership interest, but it might

1 do a high rate, might do a good rating.

2 MR. SCHONMAN: Your Honor, would
3 it be all right if I asked a question or two?

4 JUDGE SIPPEL: Certainly.

5 MR. SCHONMAN: Thank you.

6 JUDGE SIPPEL: Certainly. Thank
7 you.

8 MR. SCHONMAN: Sir, my name is
9 Gary Schonman. I'm co-counsel for the FCC's
10 Enforcement Bureau

11 CROSS EXAMINATION

12 BY MR. SCHONMAN:

13 Q During the time that Comcast was
14 negotiating with the NFL to acquire the eight-
15 game package, were there any internal
16 discussions among those in Comcast, that if
17 Comcast were successful in acquiring the
18 eight-game package for the Versus network,
19 that in order to cover the cost of doing so,
20 it might have to move the Versus network to
21 the sports tier?

22 A No.

1 Q Why was that not a consideration?

2 A The deal that was going to be --
3 the deal that was on the table with the NFL,
4 the conditions that the NFL were seeking as
5 part of that licensing deal, mandated an
6 affiliation agreement with Comcast Cable that
7 required a certain level of distribution. So,
8 it wouldn't have been possible under that
9 agreement. Now, that deal was protected by,
10 and would have been protected, our deal would
11 have been protected by an MFN, so if it didn't
12 achieve acceptance in the marketplace, we
13 would then have whatever rights that MFN would
14 have yielded.

15 MR. SCHONMAN: Thank you.

16 THE WITNESS: You're welcome.

17 MR. SCHONMAN: That's it, Your
18 Honor.

19 MR. PEREZ-MARQUES: Your Honor, I
20 have a couple on redirect, if I may.

21 JUDGE SIPPEL: Yes, sir.

22 REDIRECT EXAMINATION

1 BY MR. PEREZ-MARQUES:

2 Q Mr. Phillips pointed you, Mr.
3 Bond, to Paragraph 6 of your written
4 testimony, where you have now clarified that
5 the price he mentioned, which I won't state
6 now, is for broad digital carriage, but not
7 for analog. Is that correct?

8 A Yes.

9 Q Why is analog not, in your view,
10 appropriate at that price?

11 A The television business over the
12 last four or five years has begun a process of
13 conversion to digital, much like most
14 information technologies these days, and
15 digital distribution is much more efficient
16 than analog. And to carry a network, or to
17 launch a network in analog consumes a large
18 amount of scarce bandwidth. You can launch a
19 very large number of digital channels in the
20 space consumed by an analog channel, or a
21 large number of high definition channels. And
22 give the proliferation of channels and high

1 definition channels, and other technologies
2 that we're deploying, such as data and voice,
3 that all place demands on scarce bandwidth.
4 Analog is a challenging proposition.

5 Q So, in light of those reasons, is
6 analog distribution generally a consideration
7 for new networks being launched today?

8 A No.

9 Q Now, Mr. Phillips also asked you
10 about a surcharge cap under the 2004
11 agreement, and about the effect of that cap on
12 controlling Comcast's costs. Do you recall
13 that testimony?

14 A Yes.

15 Q Now, notwithstanding the cap on
16 the per subscriber surcharge, does the level
17 of distribution affect the cost to Comcast?

18 A Yes.

19 Q How so?

20 A If you have the same per
21 subscriber fee, but it is multiplied by a
22 lower number of subscribers, you have a lower